

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on February 13, 2001 at 2:55 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 387, 2/7/2001; SB 403,
2/7/2001
Executive Action: SB 360; SB 243; HB 84
COMMITTEE BILL

HEARING ON SB 387

Sponsor: SENATOR JON ELLINGSON, SD 33, Missoula

Proponents: Patrick Judge, Montana Environmental Information

Center
Vicki Lynne, National Center for Appropriate
Technology
Jerry Spencer, Montana Renewable Energy
Charles Day, Self
Matthew Leow, Montana Public Interest Research Group
Patti Keebler, AFL-CIO

Opponents: None

Opening Statement by Sponsor:

SENATOR JON ELLINGSON, SD 33, Missoula, stated that the bill will help people who use net metering systems. In 1999, the legislature authorized the use of net metering systems in Montana. Currently, there are approximately 70 in use and the potential is enormous. Net metering refers to an electrical generating system that actually spins an electrical meter backwards. It uses solar, wind, or hydro power. If a person is hooked up to one of these systems and is using less power than what is being generated, the meter will spin backwards. This gives the person a credit towards the electricity used when it is not being generated. A net metering system must be located on the customer generators' premises and be used and designed primarily to offset part or all of the electricity requirements. With the act passed in 1999, if a customer had a credit at the end of the calendar year, that credit was lost. This created problems for those customers who generated most of their credit towards the end of the year and whose electricity use was higher in the beginning of the year. This legislation will allow those people to choose one of four dates during the year to lose their credits. This would enable them to make better use of the generated credits by putting energy back into the electrical grid. He submitted a description of net metering,
EXHIBIT (ens36a01) .

Proponents' Testimony:

Patrick Judge, Montana Environmental Information Center, noted that his group was approached by several irrigators in Butte last fall who were concerned about the rising cost of electricity. They were interested in the net metering law and wanted to take advantage of it in order to maintain their farming operation. Originally, MEIC had wanted customers to have the flexibility to choose any date of the year to lose their credits. They compromised with the power companies to choose one of four dates. Customers which are eligible for net metering have small solar, wind, or hydro facilities.

Vicki Lynne, National Center for Appropriate Technology, replied that her group has been working with a group of irrigators on the Boulder and Jefferson rivers in a project called the Montana Rivers Project. The participants in the project are working to improve their irrigation energy and water efficiency. Many of the irrigators in the project are very interested in installing wind generators to be net metered through their irrigation pump electric meters. In this area, the irrigation season generally runs from April to October. In most locations, the wind speeds are higher and more constant during the period from late fall to early spring. This is an important economic choice for irrigators for two reasons. First, the more power an irrigator can produce and use to offset his pumping cost, the faster return he realizes on his investment in a wind generator. Lastly, with the advantage of customer choice, most irrigators may see a larger increase in their power bills, which may cause some farmers to go out of business.

Jerry Spencer, Montana Renewable Energy, said that this legislation will help the use of renewable energy in Montana and is great for Montanans future.

Charles Day, Self, exclaimed that this bill encourages residential customers to take advantage of the current law by allowing them to maximize their investment.

Matthew Leow, Montana Public Interest Research Group, urged the committee's support.

Patti Keebler, AFL-CIO, supported the legislation.

Opponents' Testimony: None

Informational Testimony:

Dave Ryan, Montana Power Company, cited that his company has provided net metering for 44 customers to date. The average size of the systems is 2.5 kilowatts. This legislation may increase customer usage.

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR ELLINGSON reiterated that this bill is a tiny change that will make a difference and urged a favorable consideration from the committee.

HEARING ON SB 403

Sponsor: SENATOR TOM BECK, SD 28, Deer Lodge

Proponents: Rick Hays, Qwest

Gene Vuckovich, Montana Rural Development Partners

Lynn Robson, Gateway Economic Development

Opponents: Matt Brainard, Public Service Commission

John Fitzpatrick, Touch America

Bill Squires, Blackfoot Communications

Marty Essen, Essen Communications Corporation

Angela Janacaro, Mid-Rivers Telephone Cooperative

Cathy Britewell, AT&T

Mark Staples, MCI

Brenda Rummel, Montanans for Competitive

Telecommunications

Bob Williams, Self

Matthew Leow, Montana Public Interest Research Group

Bob Nelson, Montana Consumer Council

Don Judge, AFL-CIO

Opening Statement by Sponsor:

SENATOR TOM BECK, SD 28, Deer Lodge, reported that this is a consumer friendly bill that will exempt local exchange telecommunications from rate regulation, while putting a tap on that regulation. It establishes a streamlined regulatory model designed to protect consumers while encouraging competition and investment in advanced broadband internet telecommunications services. Forty five other states have already moved in a similar regulatory direction. It sets price caps for basic residential and business lines. Only legislation could reprove those price ceilings, although adjustments could be made by the Public Service Commission (PSC) for governmental ordered changes, such as fees or taxes. It requires other competitive services to be market priced above relative costs to avoid anti-competitive pricing. It maintains existing laws and PSC regulation of interconnections and wholesale services to competitors to ensure open and non-discriminatory terms, prices, and conditions. It will maintain existing regulation over service quality for basic services and continued PSC compliance authority. The consumer benefits from this bill as it ensures stable prices, fixing price ceilings to assure rate stability for basic telecommunications for consumers and small businesses. It removes consumer risk to a stranded cost of competitive losses, capping access fees charged for long distance companies to encourage stable and low prices for long distance services. It supports more competition and introduction of new and better services by ensuring competing

companies have open and reasonable price accesses to local phone company services and facilities throughout ongoing regulation of interconnections and wholesale prices, terms, and conditions. It will encourage investments in new and better communications services, speeding introduction to new products and promotional packages.

Proponents' Testimony:

Rick Hays, Qwest, submitted written testimony and charts, **EXHIBIT(ens36a02)**, **EXHIBIT(ens36a03)**, **EXHIBIT(ens36a04)**, **EXHIBIT(ens36a05)**.

Gene Vuckovich, Montana Rural Development Partners, submitted written testimony, **EXHIBIT(ens36a06)**

Lynn Robson, Gateway Economic Development, submitted written testimony, **EXHIBIT(ens36a07)**.

Opponents' Testimony:

Matt Brainard, Public Service Commission, submitted written testimony and facts, **EXHIBIT(ens36a08)**, **EXHIBIT(ens36a09)**.

John Fitzpatrick, Touch America, submitted written testimony and adopted policies, **EXHIBIT(ens36a10)**, **EXHIBIT(ens36a11)**, **EXHIBIT(ens36a12)**, **EXHIBIT(ens36a13)**.

Bill Squires, Blackfoot Communications, submitted written testimony, **EXHIBIT(ens36a14)**.

Marty Essen, Essen Communications Corporation, submitted written testimony, **EXHIBIT(ens36a15)**.

Angela Janacaro, Mid-Rivers Telephone Cooperative, submitted written testimony, **EXHIBIT(ens36a16)**.

Cathy Britewell, AT&T, submitted state comparisons, **EXHIBIT(ens36a17)**.

Mark Staples, MCI, asked whether this legislation would get consumers closer or further from their goals and alternatives.

Brenda Rummel, Montanans for Competitive Telecommunications, submitted written testimony and information, **EXHIBIT(ens36a18)**, **EXHIBIT(ens36a19)**, **EXHIBIT(ens36a20)**.

Bob Williams, Self, was bothered by "exempting" on line 5, "price cap exceptions" in line 8, and the "immediate effective date." In addition, on page 4, lines 17-19, he was concerned that the section does not prohibit the company from using different prices in various demographic areas.

Matthew Leow, Montana Public Interest Research Group, was concerned that the bill would increase rates for consumers. It is apparent that the legislation is an attempt by Qwest to bolster their profits.

Bob Nelson, Montana Consumer Council, acknowledged that price regulation is a commonly accepted form of regulation, but opposed the specific approach that the legislation entails. There is no reason to assume that consumers benefit from a price cap if the rate that should be in effect for cap services during the period of the rate cap plan has not been reviewed. There is no reason to believe that consumers benefit by allowing incumbents to freely set prices in markets that are not proven to be competitive. The Consumer Council does not oppose a price cap regulation per se, but they do encourage allowing the Commission to conduct a full review and establish a plan that truly would benefit consumers by matching the pace of deregulation with the growth of actual competition.

Don Judge, AFL-CIO, declared that accessibility, reliability, and affordability are three things being jeopardized with this legislation. His group believed that SB 403 does not provide adequate protection for consumers.

Questions from Committee Members and Responses:

SENATOR MIKE HALLIGAN asked for specifics with regard to a previous statement saying that the wholesale discounts already favor Qwest. **Marty Essen** noted that small reseller companies like his get an 18.1% discount. Out of that percentage, they are supposed to be able to make a living. Normally, they give their customers an 8.33% discount when they get local phone service.

SENATOR HALLIGAN wanted to know specific rules that favor the bigger companies. **Mr. Essen** mentioned that there are a lot of rules which they have to deal with. For instance, Qwest will have a docket in front of the PSC. For a small company like his to protest that docket, attorneys must be hired which may cost \$20,000.

SENATOR HALLIGAN desired to know why a company could raise rates to force another company out of business depending upon competition. **Rick Hays** cited that prices are almost identical in Montana and other states, such as Nebraska, because the worth of

some optional products like voice messaging and caller ID has been determined. The market determines the price, as well as the companies. **SENATOR HALLIGAN** inquired about someone going to a small company, such as **Mr. Essen's**, paying \$6 per month for caller ID, reducing the cost to \$3, and receiving the 18.1% discount. **Mr. Hays** noted that the discount is off the original price.

SENATOR ALVIN ELLIS noted that for the past two years, his ranch has subscribed to six cellular phones. The price has dropped 33% and the service provided has multiplied with more minutes, free long distance, and additional weekend minutes. He wanted to know what good the price cap would be in that environment. **Mr. Hays** replied that the price cap is to protect the rate from going up. There is nothing that says it can't go down. The concern is that if oversight or regulation is discarded over that service, there is little if any competition, and the monopoly company would be able to move the price wherever it chose.

SENATOR ELLIS wondered whether there was any way to rewrite the legislation to increase competition. **David Hoffman, PSC**, declared that there is no way to rewrite a bill that would actually put in competition where it doesn't already exist.

SENATOR STEVE DOHERTY asked for an explanation of why this bill would work as the market sits today. **Mr. Hays** explained that the bill would work because it does provide consumer protection on the two main services that are outside competition - basic residential and business services. The wholesale piece of the legislation continues as it has for the past four years. This bill only attempts to address the retail side, which then stimulates more interest and willingness to invest in those retail services. **SENATOR DOHERTY** wanted to know if Qwest were to sell any of its six million rural access lines, whether the successor company would be bound by the same terms. **Mr. Hays** answered that the way the legislation is drafted, there is no mention about future sales or buyers. One reason no amendment had been made yet was that the purchaser would go back to the same point that Qwest is currently at. Another reason is that during a sale, there is discussion with the PSC about what the buyer's plans are regarding pricing and other issues associated with purchasing the properties.

SENATOR DOHERTY referred to a state comparison of what other states, in their negotiations with Qwest over deregulating the market, were able to draft. He noticed that North Carolina was missing from the comparison. He wanted to know what AT&T's commitment to Montana was. **Cathy Britewell** noted that she attempted to compare states with similar activity within Qwest

territory. The important thing to remember is that there are different segments of the market. The long distance market, which became competitive and caused the breakup of AT&T in the early 1980's, has become extremely competitive. As a result, long distance carriers have been able to bring to the market and their customers incredible alternatives and choices, with regard to calling plans, reduced rates, new services, and expanded offerings. When AT&T was split up and began providing long distance service, companies like MCI and Sprint entered the market and were the competition. In Montana, AT&T ended up getting some regulatory relief on a trial basis, which was extended twice and finally made permanent. If this legislation passed, the long distance industry would be subject to more regulation than local companies.

SENATOR MIKE TAYLOR questioned that if this bill were to pass, what effects it would have on the rates for Montana. **Mr. Hays** stated that the rates today are outside regulation because they are viewed as a deregulated day service.

SENATOR TAYLOR pressed why **Gene Vuckovich** was a proponent of the bill. **Mr. Vuckovich** hoped that broadband technology could be brought to Montana.

SENATOR TAYLOR wished for someone to address concerns and economic impact issues. **John Fitzpatrick** mentioned that Mid-Rivers Cooperative went out to several communities, made an investment, and now provides DSL service to rural customers. At the beginning of the legislative session, Qwest was only providing DSL service to one community, Helena. Qwest won't make an investment to install DSL lines unless at least 200 people show interest. Mid-Rivers is an entrepreneurial company aimed at serving its customers while Qwest wants a guarantee with no risk.

SENATOR BEA MCCARTHY desired to know what the price floor on the residential lines would be. **Mr. Hays** did not have a specific number. The price floor is information provided to the PSC under protective order which shows them what it is. It is there to be reviewed by the PSC or if it is contested, it is available.

SENATOR DON RYAN noted that Qwest had been labeled as a "trojan horse" by other companies. He asked for an explanation of what those companies were missing, didn't understand, and why this bill is necessary now. **Mr. Hays** exclaimed that Qwest has very little flexibility when it comes to pricing their products and services. In today's changing marketplace, that doesn't work well. The economy and technology should be stimulated with as much investment and as many players as possible, on both the retail and wholesale side. Competition is doing as well here as

it is in other states regardless of price cap or not. This legislation is another factor in helping the economy of Montana move forward.

SENATOR HALLIGAN referred to previous testimony talking about a single business line costing \$45 and Qwest offering it for \$47 so the smaller company couldn't compete. **Mr. Hays** declared that their wholesale prices that were established by the PSC and are being reviewed currently, set the price for the line part of that wholesale service at \$27. He wasn't sure how \$47 came about. His company has a list price for the single party business service of \$34. Also included are some federal fees which add on another \$9 to \$10. When you add all of those together, one ends up in the \$45 to \$47 range. Then the challenge is to add on additional features to make it a profitable service.

SENATOR HALLIGAN asked about the issue of the 18.1% discount and why Blackfoot Communications couldn't compete. **Bill Squires** informed the committee that the numbers are prices that have been approved by the PSC for the two wire loop, which is the connection of the line at the switch. Currently, the discount is 18.1%. As the retail price declines, the margin cost declines. Qwest, in an ongoing docket with the PSC, has suggested that the percentage go to 4.3% on residential service and 7.8% on business lines.

SENATOR HALLIGAN wondered how the PSC viewed the request to reduce that percentage. **Mike Lee, PSC**, indicated that there are three ways of identifying competitors who enter into the local market and compete principally with regional companies, which includes Qwest. In the 1996 docket, the PSC went through an expedited rate case, required by federal law, to exempt the 18.1% discount rate off the retail rates for wholesale purposes.

SENATOR TOM ZOOK inquired why we would want caps when there is no pressure to increase rates. **Mr. Hays** proclaimed that the cap has been perceived as a transitional type of regulatory environment to alleviate consumer fears that the prices will go through the roof. **SENATOR ZOOK** sought to know why a company like Qwest that appears to be in a dominant position would want to increase competition. **Mr. Hays** declared that it is good for Montana because it increases competition.

SENATOR COREY STAPLETON requested a definition of "geographic area" on page 4, lines 17 and 19. **Mr. Hays** replied that the way they typically look at geographic areas is by their calling area or central call switching facility. The costs can be identified fairly easily based upon the switching equipment and facilities that serve those customers. **SENATOR STAPLETON** then asked about

the average size of a typical calling area. **Mr. Hays** answered that the size of the serving areas depend upon the number of customers in that area. Approximately 10,000 customer lines can be accommodated within each switching area.

SENATOR DOHERTY wanted clarification on the 271 process. **Bonnie Lorang, PSC**, noted that the term 271 came from the federal 1996 act and refers to a section designed to bring the incumbent Baby Bells, US Wests, Qwests, and regional Bell operating companies into the long distance market. The 271 process provides long distance relief. The process is designed to collaboratively look at the extent of competition in the local market, the operation support systems, the computer interfaces between Qwest and other carriers, and examine how competitive carriers can enter the market and be sustained in the market. The request can be made to the FCC that Qwest be allowed to provide long distance service once the collaborative process has assured that the market is indeed open and competitors can provide service on a local level. **SENATOR DOHERTY** questioned the current status of that process and the preliminary results. **Ms. Lorang** stated that they were in the middle of the process. It is the goal of all the parties involved that there will be favorable recommendation at the end of the process, the local markets will be open, and in turn, the PSC and the FCC could recommend that Qwest be allowed to provide long distance service. It looks like the process will be concluded during mid to late 2001. Then the states would make a recommendation to the FCC and they would act after that.

SENATOR DOHERTY sought to know what Qwest's position would be with regard to going through a rate case to determine what the price caps should be set at as opposed to having the legislature setting the price caps. **Mr. Hays** stated their position on the rate review is that the opportunity exists and has existed with the PSC through different dockets. It is important to get moving with more investments and opportunities for Montanans.

Closing by Sponsor:

SENATOR BECK noted that he had some amendments for the bill. He believed it is a consumer friendly bill and asked for favorable consideration.

After the hearing, a woman handed in written testimony for **Mary Beaudry** of **Stream International**, **EXHIBIT(ens36a21)**, and for **Doug Nelson** of **gebot.com**, **EXHIBIT(ens36a22)**.

EXECUTIVE ACTION ON SB 360

Motion: SENATOR DOHERTY moved that **AMENDMENT SB036001.AGP, EXHIBIT (ens36a23), DO PASS.**

Discussion:

Kryss Kuntz, Montana Telecommunications Access Program, discussed the amendments.

SENATOR TAYLOR noted that the amendments came about because the bill did not have a sliding scale. Anyone making over \$92,000 would not be able to take advantage of this program.

SENATOR STAPLETON wondered what the significance of 400% was. **SENATOR TAYLOR** replied that committee was originally concerned that someone making a large amount of money per year could take advantage of the program. If the bill was limited to people below the poverty level, making less than \$23,000, there wouldn't be that many people with hearing impaired problems to use the available funds.

Vote: Motion carried 6-5 with Cole, Ellis, Johnson, Stapleton, and Zook voting no.

Motion/Vote: SENATOR DOHERTY moved that **SB 360 DO PASS AS AMENDED.** Motion carried 9-2 with Johnson and Stapleton voting no.

EXECUTIVE ACTION ON SB 243

Discussion:

SENATOR ROYAL JOHNSON stated that the bill, as originally written, was an attempt to find a fixed rate for customers from 2002 until 2007.

Todd Everts discussed and gave an overview of the amendments that were passed by the subcommittee.

SENATOR DOHERTY asked who determines whether the energy risk management process, which includes hedging contracts, are a good or bad idea. **Mr. Everts** explained that the default supplier made that decision. **SENATOR DOHERTY** wanted to know who would take the responsibility if a hedging contract didn't work. **Mr. Everts** cited page 6, subsection 9 of the amendment SB024308.ate.

SENATOR STAPLETON questioned whether an amendment could be added dealing with a retail cancel order on a rate. **Pat Corcoran, Montana Power Company (MPC),** replied that it might not be in the

best interest to put default supply customers at the risk of the marketplace.

SENATOR RYAN elaborated that the basic premise laid before the subcommittee was to get a five year fixed price. When the rate transition was looked at, there was a cost factor associated with that. The subcommittee agreed that the PSC should have flexibility in the ability to look at the request for proposal that will go out for the five year contract to ensure there is understanding in how the bids are placed. The longer a contract is run, the less risk there is for the supplier. The PSC should know, well in advance, what parameters they have and the requests for proposals. The PSC needs to have the ability to look at what's added on to current power bills in transmission costs to ensure that is correct.

SENATOR ZOOK thought that there needed to be flexibility in order to get the lowest price for the consumer. The portfolio approach is really necessary to give every opportunity for the lowest possible price that the default supplier has to come up with. Every contract has to be approved by the PSC. Risk management is an important part and needs to be included.

Mr. Everts noted that the 5% of the customer contracted load was taken out of the bill. **SENATOR HALLIGAN** questioned what rate the large customers would enter in at. **Mr. Everts** replied that they would come in at the rate contracted for everyone else.

SENATOR TAYLOR wondered why the 5% was taken out of the bill. **SENATOR JOHNSON** declared that it was a cost item.

SENATOR DOHERTY sought to know if the PSC will have any say on whether the educational costs are valid or not. **Mr. Everts** didn't believe so. **SENATOR DOHERTY** inquired if the PSC would have oversight to determine whether market based prices are legitimate. **Mr. Everts** didn't know for sure. **SENATOR JOHNSON** proclaimed that the PSC will receive the contract from the default supplier and that would be the oversight.

SENATOR HALLIGAN implored why September 1, 2001 was chosen. **Mr. Corcoran** declared that it was fully intended to begin the competitive bid process within the next month. The date of September 1 was added as an outlying base by which the bid process should begin.

SENATOR DOHERTY inquired what basis the PSC has to reject contracts. **Mr. Everts** cited amendment 28 which says the PSC may approve or reject contracts.

SENATOR DOHERTY referenced amendment 29, which takes out the language stating that the PSC would establish a mechanism ensuring that "just and reasonable" electricity costs are fully recoverable and changed to "approved." He wanted to know why "just and reasonable" was being changed. **Jay Stovall, PSC**, didn't know. **SENATOR JOHNSON** noted that the approval in amendment 28 allows for the PSC to decide whether the rate is "just and reasonable." **Susan Good, PSC**, voiced concerns about some of the amendments and that the bill might detract from the authority the PSC has. **Dennis Lopach, Northwestern Corporation**, referred to page 19, line 11 of the gray bill and the factors going into the decision of which bids to accept. After the default supplier decides which bids should move forward, they are submitted to the PSC for their approval. "Just and reasonable" is taken out because it's a term associated with cost of service rate making.

SENATOR HALLIGAN pressed whether it helps or hurts, in the bidding process, to have it be confidential or open. **Mr. Corcoran** stated that the bid process is intended to be a private, confidential activity. If that information was publicly disclosed, it would prevent the market from working as intended. The default supplier simply provides power in the marketplace at a cost and passes that cost onto consumers.

EXECUTIVE ACTION ON CONCEPT COMMITTEE BILL

Motion/Vote: **SENATOR TAYLOR** moved that the **CONCEPT COMMITTEE BILL FOR HB 84, EXHIBIT(ens36a24), DO PASS. Motion carried 10-1 with Stapleton voting no.**

ADJOURNMENT

Adjournment: 6:55 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens36aad)